IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 10092 of 1995

For Approval and Signature:

HON'BLE MR. JUSTICE ANANT S DAVE

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

SHAILESH J MEHTA

Versus

STATE OF GUJARAT

Appearance:

1. Special Civil Application No. 10092 of 1995

MR JITENDRA M PATEL for Petitioner No. 1

MR SP HASURKAR for Respondent No. 1-2

CORAM : HON'BLE MR. JUSTICE ANANT S DAVE

Date of decision: 23/12/2004

ORAL JUDGEMENT

1. This petition under Article 226 of the Constitution of India is filed by the petitioner, a

Police Officer, against the arbitrary and unreasonable action on the part of the respondents-Authorities of not granting the petitioner (i) injury pension; (ii) injury special leave; and (iii) injury conveyance allowance, even though he is entitled, under the relevant Rules and Government Resolutions, to receive the said benefits.

2. It is the case of the petitioner that, at the relevant point of time, when the petitioner was discharging his duties as Circle Police Inspector at Bharuch, on 7th October 1983, the petitioner was chasing one stolen vehicle in the jeep driven by the driver, named, Kashinath Gangaram, unfortunately, the said vehicle met with an accident and, due to that, the petitioner received serious injuries on his nose and legs. A First Information Report was also lodged and an offence was registered at Ankleshwar Police Station being C.R. No.I-401 of 1983 under Sections 279, 338 of the Indian Penal Code read with Sections 112 and 116 of the Motor Vehicles Act.

2.1 Due to serious injuries received by the petitioner, he was required to take medical treatment from 7th October 1983 to 4th December 1983 and, subsequently, he was operated at Mumbai for sustaining injuries on knees and bone, and legzments tibia upper end was broken. The petitioner had taken treatment in Mumbai from 8th June 1984 to 31st July 1984 and was operated by Dr. Chobas at his dispensary at Mumbai. The petitioner was required to undergo another operation, since the petitioner was not fully cured and he had taken treatment from 15.9.1985 to 30.10.1985, when the second operation was performed on the petitioner. However, in spite the second operation also, the injury of the petitioner was not fully cured, and the petitioner had sustained permanent disability.

2.2 Due to different types of injuries suffered by the petitioner, he was referred to the Standing Medical Board, Civil Hospital, at Ahmedabad, and the said Board had also examined the petitioner, and a certificate dated 5th July 1988 was issued along with a forwarding letter of the even date. The said certificate was submitted to the Deputy Administrative Officer, at the Office of the Commissioner of Police, at Vadodara. As per the said certificate, the petitioner received the following injuries.

(A) Received in action Receipts
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1. Has the officer lost an eye or a limb; or has the permanently lost the use of an eye of a limb or is the injury equivalent to the lost of a limb and permanent (article 639 to 544 of the pay warrant).	At present tibia upper End with terminal 2nd or restricted movement with ligzments in stability & gena rarum of 10' & Lypoasthesia in infrapatella region. Wasting of guadiness
2. If the case does not come under the category 1(a) was the injury severe in character b) Are its effects still very severe?	1/2" plinals shortening on 3/4" Pt. cannot sit cross-legged & cannot sit in squatting position
3. If the case if classified under the category 2, are the effects of the injury permanent or likely to be permanent (Articles 640 of the pay warrant)	Permanent disability assessed at 50% (fifty per cent)
4. Injury that do not come under the above categories should be classified here making use of the following terms 3/4 severe of slight and permanent or not permanent as the case may be.	

According to the petitioner, permanent disability of the petitioner was assessed at 50%.

2.3 Having undergone the relevant scrutiny by the Medical Board at the Civil Hospital run by the said Authorities, the petitioner made a claim through the Department mainly on three different heads, namely, (i)

injury pension; (ii) injury special leave and (iii) injury conveyance allowance.

2.4 The petitioner claimed injury pension under Rules 251, 270(A), 271(3) and 272 read with Rule 294 and 297 of the Bombay Civil Services Rules ('Rules' for short). The petitioner claimed injury special leave under Rules 748 and 749 of the Rules. So far as the claim with regard to injury conveyance allowance is concerned, the petitioner relied upon Government Resolutions dated 5th January 1979 and 13th July 1984 by which, the Department decided to consider the case of the concerned employees for injury conveyance allowance on the basis of the recommendation of the Head of Department, which is based on the report of the appropriate Medical Authority.

2.5 Even the highest authority in the Police Department in the State of Gujarat, namely, the Director General of Police, vide his letter dated 20th December 1990 also recommended the case of the petitioner for injury special leave, which is permissible under Rule 748 of the Rules. The said letter was written on the basis of the report of the Medical Board.

2.6 Since the correspondence with the Authorities continued from time to time, and, yet, no decision was taken, the District Superintendent of Police, Bharuch, had clearly recommended the case of the petitioner for injury pension to the Director General of Police, State of Gujarat, vide letter dated 4.12.1991/13.1.1992. Along with the said letter, the District Superintendent of Police, Bharuch, had submitted relevant documentary evidence, including the certificate of the President of the Standing Medical Board, at Civil Hospital, Gujarat State, Ahmedabad, certifying 50% permanent disability suffered by the petitioner, and a copy of the First Information Report being C.R. No.I-401/83, and recommended the case of the petitioner for injury pension as per the Rules.

2.7. According to the petitioner, in view of the serious injuries and 50% of permanent disability suffered by him, he is entitled to get injury pension under various provisions of the Rules. The relevant provision under Rule 251 is reproduced as under:

> "Rule 251 The following different classes of pension may be granted to Government servants or their families:-
>
> xx xx xx
>
> xx xx xx
>
> xx xx xx

(6) Wound or injury pension, which is a pension granted to a Government servant wounded or injured while in government service.

xx xx xx"

2.8 Injury leave for a period of 158 days is also available to the petitioner under Rule 748(1), which reads as under:

"Rule 748(1) Subject to the conditions hereinafter specified Government may grant special disability leave to a Government servant who is disabled by injury intentionally inflicted or caused in or in consequence of, the due performance of his official duties or in consequence of his official position."

2.9 The third claim of the petitioner about special conveyance allowance is also available to the petitioner as per the Government Resolutions dated 15th January 1979 and 13th July 1984, by which, the said conveyance allowance was increased from Rs.50/- to Rs.75/- with effect from 1.8.1984.

3. Therefore, according to the learned advocate for the petitioner, a clear case is made out by the petitioner under the relevant provisions of the Bombay Civil Services Rules for (i) injury pension; (ii) injury special leave and (iii) injury conveyance allowance under various Government Resolutions as relied upon by the petitioner. According to the learned advocate for the petitioner, the factual aspects about the accident, serious injuries received by the petitioner, and 50% partial disability, are not disputed by the respondents. Not only that, but the District Superintendent of Police, after recording the case of the petitioner, recommended his case of the petitioner to the higher authority for granting the injury pension. According to the learned advocate for the petitioner, even the Standing Medical Board had also given certificate about the injuries sustained by the petitioner and the continuous agony of the petitioner of undergoing two operations at Mumbai to cure his injuries. According to the learned advocate for the petitioner, it is unfortunate that the Police Officer, who was performing his duty to chase a stolen vehicle and who had suffered injuries during the course of his duties, is deprived of the legitimate and rightful claim to receive (i) injury pension; (ii) injury special leave and (iii) injury conveyance allowance available to him under the Rules. Even the relevant documentary evidence furnished by the petitioner through proper channel is also not considered by the Authority with

proper application of mind and the claim for injury pension was rejected vide order dated 23.11.1994. Even the subsequent detailed representation of the petitioner dated 26.2.1993 is also turned down by the Department of Home, State of Gujarat, vide order dated 23.7.1995. According to the learned advocate for the petitioner, denial to (i) injury pension; (ii) injury special leave and (iii) injury conveyance allowance to the petitioner is unreasonable and arbitrary.

4. The Court issued Rule in the matter in December 1995. No reply affidavit is filed by the respondents.

5. The learned Assistant Government Pleader, Shri H.M. Prachchhak, has submitted that, at the relevant point of time, when a letter was written by the Director General of Police to the Additional Chief Secretary, Home Department, Sachivalaya, Gandhinagar, regarding information that was called for from the petitioner with regard to medical certificate, the same was not produced at that time and, therefore, injury pension was not granted to the petitioner. The same reason is shown by the respondents for not granting injury special leave to the petitioner at that point of time. However, according to the learned Assistant Government Pleader, Shri H.M. Prachchhak, if appropriate directions are given to the respondents to reconsider the case of the petitioner, the respondents-Authorities will look into the grievances, particularly, in view of the fact that, in the capacity of the police Officer, while performing official duties, prima facie, the petitioner had sustained serious injuries and disability, as stated by the Medical Board in its certificate.

6. Having heard the learned advocates for the parties and having perused the record, it transpires that the petitioner had suffered serious injuries while he was on duty and, particularly, when he along with the driver of the jeep, was chasing a stolen vehicle. Apart from the treatment undertaken by the petitioner, and, despite operations twice at the hospitals in Mumbai, the injuries were not fully cured and the President of the Medical Board of the Civil Hospital, Ahmedabad, had clearly given the findings about the injuries suffered by the petitioner resulting in 50% permanent disability. So far as the claim of the petitioner to receive injury pension under Rules 251, 270(A) and 271(3), 272 read with Rule 294 and 297 of the Rules, is not disputed in view of the certificate given by the Medical Board. Therefore, the case of the petitioner is required to be considered without any further delay.

7. So far as the injury leave is concerned, it remains undisputed that the petitioner is entitled to injury leave for a period of 158 days in total, i.e. from 7.10.1983 to 4.12.1983 for a period of 53 days, and, thereafter, from 8.6.1984 to 31.7.1984 for 54 days and for a period from 15.9.1985 to 30.10.1985 for 46 days, which is claimed under Rules 748(1) and 749 of the Rules. As per the Rule 748(1) read with Rule 749 of the Rules, and, subject to the conditions laid down by the Government, a government employee is entitled to receive special disability leave for his injuries sustained during performance of his official duties or in consequence of his official position. In the present case, the petitioner had suffered injuries as certified by the Medical Board, Civil Hospital, during the course of his official duties and, therefore, the aforesaid Rule is clearly applicable to the case of the petitioner, and he is entitled to injury leave for the total period of 158 days.

8. The claim about injury conveyance allowance is also covered under Government Resolutions dated 15.1.1997 and 13.7.1984, whereby, the employees partly handicapped is entitled to such benefits under the said resolutions.

9. In the present case, apart from the claim made by the petitioner, two higher authorities have also recommenced the case of the petitioner to grant the benefits of (i) injury pension; (ii) injury special leave and (iii) injury conveyance allowance to the petitioner, but the same were denied by the Authorities without any reasons or without seeking any clarification from the petitioner. The last valiant effort made by the petitioner in detailed representation dated 26.2.1993 also did not yield any result, and a cryptic reply was given on 23.7.1995 by the respondent No.1 that the representation of the petitioner does not require any reconsideration.

10. After taking all the circumstances into consideration, in my view, the petitioner is entitled to receive (i) injury pension; (ii) injury special leave for 158 days, and (iii) injury conveyance allowance. Hence, the present petition has to be allowed by setting aside the impugned orders.

11. In the result, the petition is allowed. The impugned orders dated 19.1.1993 (annexure "H"), dated 19.1.1993 (annexure "I") and 23.7.1993 (Annexure "L") and 23.11.1994 (Annexure "M") are quashed and set aside. It

is held that the petitioner is entitled to receive (i) injury pension; (ii) injury special leave for 158 days, and (iii) injury conveyance allowance permissible under the Government Resolutions, and, therefore, the respondents are directed to determine the aforesaid amounts and to pay to the petitioner within three months from the date of receipt of the writ of the order of this Court, in view of the fact that the petitioner had already retired from service. Rule is made absolute with no order as to costs.

(Anant S. Dave, J.)
(swamy)